

COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

97-128
RECEIVED

JAN 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
MARTIN W. HOFFMAN,)
TRUSTEE) File No. BRCT-881201LG
)
For Renewal of License of)
Station WHCT-TV, Hartford, Connecticut)

TO: The Commission

REPLY OF SHURBERG BROADCASTING OF HARTFORD
TO "TRUSTEE'S OBJECTION"

1. Shurberg Broadcasting of Hartford ("SBH") hereby replies to the "Trustee's Objection" filed by Martin W. Hoffman. Mr. Hoffman's "Objection" is, in effect, an opposition to SBH's Petition to Dismiss Mr. Hoffman's above-captioned application for renewal of the license of Station WHCT-TV, Hartford. As set forth in detail below, in his "Objection" Mr. Hoffman concedes SBH's factual assertions, and offers no valid substantive argument against SBH's legal assertions. Under the circumstances, then, dismissal of his application is clearly warranted.

2. In his "Objection", Mr. Hoffman advances two separate arguments. First, he asserts that SBH has no standing to oppose Mr. Hoffman's application. Second, he asserts that SBH has not alleged "sufficient facts".

3. With respect to Mr. Hoffman's standing argument, it suffices to say that SBH is a competing applicant (File No. BPCT-831202KF) for Channel 18 in Hartford. This means that SBH's

application (which has been accepted for filing by the Commission) and Mr. Hoffman's application are mutually exclusive by virtue of electronic interference. Such mutual exclusivity plainly accords standing to one such applicant to challenge the application of the other. See, e.g., NBC v. FCC (KOA), 132 F.2d 545 (D.C. Cir. 1942), aff'd, 319 U.S. 239 (1943). ^{1/}

4. While Mr. Hoffman concedes that "electronic interference" is an established basis for standing, Objection at 4, he seems not to realize that mutually exclusive applications derive their mutual exclusivity from precisely such electronic interference. As a result, even though he acknowledges that such interference does confer standing, he simply ignores the fact that that acknowledgement completely guts his standing argument. In any event, SBH is unquestionably a party in interest with standing to challenge Mr. Hoffman's application.

5. With respect to his second argument, Mr. Hoffman's approach is similarly odd. He concedes the accuracy of SBH's factual assertions: according to Mr. Hoffman, virtually all he presently holds in the way of assets are the station's instruments of authorizations "since the tangible assets, i.e.

^{1/} Mr. Hoffman's standing argument is especially bizarre in view of the extended history of this case. As the Commission (and, presumably, Mr. Hoffman) know, SBH has been seeking the Channel 18 construction permit for approximately 10 years. Its efforts have taken SBH from the Commission to the U.S. Court of Appeals for the District of Columbia Circuit, to the U.S. District Court for the District of Columbia, and ultimately to the United States Supreme Court. At no time has the Commission (or any other party or forum, for that matter) ever even suggested, much less held, that SBH lacks standing.

the television station at 18 Garden Street, equipment, etc., are currently in the possession of secured creditors." Objection at 3, ¶7. Moreover, he concedes that he himself is not seeking renewal of the station's license so that he may operate the station, but rather so that he may sell it to some supposed third party. See Objection at 5 ("the Trustee seeks to renew the licenses in order to assign them to a third party").

6. Having admitted the validity of SBH's factual assertions, Mr. Hoffman attempts to sidestep the consequences of those admissions by claiming that he believes that his efforts might result in earlier resumption of operation by Channel 18 than would grant of SBH's application. That claim misses the point several times over.

7. Regardless of what Mr. Hoffman may believe, the fact is that he himself has absolutely no authority to put the station back on the air (as he himself has expressly acknowledged). Moreover, despite the fact that he has repeatedly represented to the Commission that a sale of the station may be imminent, those representations have invariably proved to be completely inaccurate. ^{2/}

^{2/} For example, on October 9, 1992, Mr. Hoffman advised the Commission that he was negotiating with a particular party, whose offer Mr. Hoffman was "strongly considering". According to Mr. Hoffman at that time, "if an agreement is reached, it will be reached within a very short period of time". See Attachment A hereto. But on December 28, 1992 -- almost three months later -- Mr. Hoffman again advised the Commission that he was negotiating with the same party, and that he was "strongly considering" that party's offer, and that "if an agreement is reached, it will be reached within a very short period of time." See Attachment B hereto. It bears noting that the same, or nearly identical, (continued...)

8. Further, the practical likelihood of anyone buying the station from the Trustee at this point is near zero. After all, putting aside the pendency of SBH's mutually exclusive application, it is possible that Mr. Hoffman in fact has nothing at all to sell in view of the fact that there is pending a Petition to Dismiss Mr. Hoffman's application because of his failure to tender a timely hearing fee. If that Petition were to be granted, Mr. Hoffman's renewal application would be dismissed, leaving Mr. Hoffman with nothing to sell. It is therefore understandable that the supposed buyers which Mr. Hoffman attempts to conjure up appear to be staying away from him in droves.

9. Additionally, Mr. Hoffman cannot claim that a sale

^{2/}(...continued)
boilerplate language appears in Mr. Hoffman's letters to the Commission over the last two years.

Moreover, one week before Mr. Hoffman's December 28, 1992 representations to the Commission concerning his supposed negotiations, the station's assets were apparently advertised as being for sale in the pages of Broadcasting magazine from a company in Pennsylvania (based on the area code listed in the ad). See Attachment C hereto. Further, in January, 1993 SBH obtained a brochure listing all of the assets of the station as being for sale through Maze Corporation (located in Alabama, and therefore presumably distinct from the source of the Broadcasting ad), which describes itself as the "exclusive brokers" for the transaction. See Attachment D hereto. That document is particularly interesting, as it suggests that the assets' seller does not contemplate that those assets will be used where they are presently situated (i.e., "Buyer is responsible for removal of equipment.").

It is difficult, if not impossible, to square these items with Mr. Hoffman's rosy predictions about the likelihood of a sale "within a very short period of time". It would appear that Mr. Hoffman's representations concerning the likelihood of a sale of the station are less than reliable, to say the least. This is especially true in view of the fact that he has supposedly been attempting to sell the station for almost two years already, without success.

of the station would benefit the creditors of the bankrupt former licensee (or, conversely, that dismissal of his application would harm such creditors). As noted above, the secured creditors have already foreclosed on the station's tangible assets, in return for which they have relinquished any further claims against the estate. Thus, to the extent that the bankrupt's estate contained assets which might be used to pay off creditors, those assets have already been used for just that purpose. In effect, no property remains in the estate which can legitimately be dedicated for that purpose. ^{3/}

10. This is not to say, of course, that any remaining unsatisfied creditors are without recourse. SBH has determined that other sources of assets, thus far apparently unexplored by Mr. Hoffman, may be available. The bankrupt former licensee was a supposedly limited partnership named Astroline Communications Company Limited Partnership ("Astroline Communications"). But Astroline Communications was but one of a number of entities ("the Astroline Entities"), all organized by the same group of individuals, which used the name "Astroline" in their name -- for example, one of Astroline Communications' limited partners was "Astroline Company". Moreover, SBH has obtained documents which indicate that some (if not all) of the individuals who organized

^{3/} While the station's instruments of authorization technically remain in the estate, it is a fundamental principle that those instruments do not constitute "property" in any conventional sense. See, e.g., 47 U.S.C. §§301, 307(c); see also, e.g., Monroe Communications Corporation v. FCC, 900 F.2d 351, 359 (D.C. Cir. 1990) (Silberman, J., concurring) (reflecting that renewal applicants have no property interest in renewal of license).

the Astroline Entities may have used the name "Astroline" to apply to all of the various Astroline Entities more or less interchangeably.

11. These factors are significant because, under the law of Massachusetts (i.e., the jurisdiction in which Astroline Communications was organized), a limited partner whose name is used in the name of the limited partnership becomes liable to creditors of the limited partnership, notwithstanding that partner's supposedly "limited" status. See 109 Mass. Ann. Laws §§2(2) and 19(d). ^{4/} Certainly the use of the term "Astroline" in the name of Astroline Communications triggers that provision with respect to "Astroline Company", which was supposedly a limited partner of Astroline Communications. Arguably, this effect is even farther reaching in light of the plethora of entities featuring "Astroline" in their names. If SBH is correct in its understanding of the underlying legal principle, then the creditors of Astroline Communications should be able to reach the assets of the various Astroline Entities (and, very likely, the

^{4/} The statute contains some limited exceptions which do not appear relevant to the instant situation. Section 19(d) of Chapter 109 of the Laws of Massachusetts provides that

[a] limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subclause (i) of clause (2) of section two, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Subclause (i) of clause (2) of section two, referenced in that quotation, proscribes the use of a limited partner's name in the name of the limited partnership unless "it is also the name of a general partner or the corporate name of a corporate general partner."

assets of any and all of the individual principals of those Astroline Entities) to satisfy their claims. Thus, the Commission need not be concerned about the fate of any as-yet-unsatisfied creditors of Astroline Communications. ^{5/}

12. In summary, far from undermining SBH's motion, Mr. Hoffman's "Objection" provides support for the dismissal of the above-captioned application. By his own admission, Mr. Hoffman holds no tangible assets with which he (or any buyer from the bankrupt's estate) might recommence operation of the station. And, Mr. Hoffman's boilerplate (and historically inaccurate) claims concerning possible buyers notwithstanding, there is no reason to believe that anyone is likely to buy the licenses from the estate; to the contrary, as discussed above, there is substantial reason to believe that nobody in his or her right mind would be interested in trying to buy them.

13. Under these circumstances, the Commission's statutory mandate to operate in the public interest leaves it only one option: the Commission can and should dismiss Mr. Hoffman's application and grant SBH's application, in order to promote the earliest recommencement of broadcast operation on Channel 18. As the Commission itself has very recently stated,

When a licensee discontinues operations for a long period of time, the public is harmed through diminished service. This harm is compounded when the licensee is


^{5/} For that matter, it does not appear from the records of the bankruptcy proceeding that Mr. Hoffman has even yet made any effort to obtain the assets of even Astroline Communications' general partners, who are unquestionably liable for the partnership's obligations irrespective of whether the partnership was, in fact, a bona fide "limited" partnership.

unable or unwilling to restore service and permanently discontinues operations but does not provide that information to the Commission so that the frequency might be used by another party. Allowing such licensees to preserve their exclusive right to use the frequency precludes the provision of service to the public by another interested party that would resume station operations. It also hinders the Commission's maximum utilization of the electromagnetic spectrum in the public interest.

The Commission has historically regarded as paramount its role under the Communications Act to ensure that licensees broadcast in the public interest. . . . Unjustified prolonged suspension of station operations disserves the public interest. . . .

Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations, FCC 92-557, released December 30, 1992, at ¶¶5-6. Having delineated the public interest ramifications of prolonged suspension of station operations in these stark terms, the Commission must recognize that Mr. Hoffman's temporizing has been and continues to be contrary to the public interest: his application should be dismissed promptly, and SBH's application should be granted to permit prompt restoration of service on Channel 18 for the benefit of the Hartford audience.

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Shurberg Broadcasting
of Hartford

January 29, 1993

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of January, 1993, I caused copies of the foregoing "Reply of Shurberg Broadcasting of Hartford to 'Trustee's Objection'" to be placed in the U.S. mail, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

The Honorable James H. Quello,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 802
Washington, D.C. 20554
(BY HAND)

The Honorable Sherrie Marshall,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 826
Washington, D.C. 20554
(BY HAND)

The Honorable Andrew C. Barrett,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 844
Washington, D.C. 20554
(BY HAND)

The Honorable Ervin S. Duggan,
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, D.C. 20554
(BY HAND)

Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 314
Washington, D.C. 20554
(BY HAND)

Barbara A. Kreisman, Chief
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 702
Washington, D.C. 20554
(BY HAND)

Clay Pendarvis, Chief
Television Branch, Video Services
Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 700
Washington, D.C. 20554
(BY HAND)

Martin Hoffman, Esquire
363 Main Street
Hartford, Connecticut 06106
Trustee-in-Bankruptcy for
Astroline Communications Company
Limited Partnership

Gloria W. Stanford
340 E. Washington Blvd.
Unit 005
Pasadena, California 91104


/s/ Harry F. Cole
Harry F. Cole